

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-155794-07

Date:

January 28, 2008

Attention:

LEGEND:

P =

EIN:

S =

EIN:

D1 =

Year 1 =

D2 =

Year 2 =

Year 3=

Dear :

This ruling is in reply to the letter submitted by P's authorized representative that requested an extension of time under section 301.9100-1(c) of the Procedure and Administration Regulations for P to file the two required Forms 970, Application To Use LIFO Inventory Method, on behalf of its subsidiary, S. P's request was made in accordance with section 301.9100-3.

P is the parent corporation of an affiliated group of corporations that files consolidated federal income tax returns on a calendar year basis. Included in these returns are various subsidiaries, including S.

Two divisions of S are pertinent to this ruling request. One division, D1, was formed by S in Year 1. In that year, D1 acquired inventory that it accounted for under the last-in, first-out (LIFO) inventory method. D1's inventory was included in its own LIFO pool. P failed to attach the required Form 970 to its consolidated federal income tax return for that year. Subsequent to Year 1, this inventory has continually been valued on the LIFO inventory method.

Similarly, P failed to attach the required Form 970 to its consolidated federal income tax return for inventory acquired by the other division of S pertinent to this ruling request, D2. S formed D2 in Year 2 and D2 first acquired inventory in Year 3. This inventory was accounted for under the LIFO inventory method and was included in its own LIFO pool. The Form 970 needed to properly adopt and use the LIFO inventory method was not filed by P. Subsequent to Year 3, the inventory has continually been valued on the LIFO inventory method.

P represents that it, and not the Internal Revenue Service, discovered its failure to file the required Forms 970. Specifically, P states that it discovered that the Forms 970 were missing while it was preparing an application to change its accounting method for inventories. P also represents that the LIFO conformity requirement of section 1.472-2(e) of the Income Tax Regulations is satisfied as it has continually used since Year 1 and Year 3, respectively, the LIFO inventory method for the inventory of D1 and D2 for financial reporting purposes.

Section 472 of the Internal Revenue Code provides that a taxpayer may use the LIFO method of inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe.

Section 1.472-3 provides that the LIFO inventory method may be adopted and used only if the taxpayer files with its income tax return for the tax year as of the close of which the method is first to be used a statement of its election to use such inventory method. The statement shall be made on Form 970.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of the time to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I, provided that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Section 301.9100-1(b) also defines an election to include an application for relief in respect to tax, or a request to adopt, change, or retain an accounting method or accounting period.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections. If the provisions of section 301.9100-2 do not apply to a taxpayer's situation, the provisions of section 301.9100-3 may apply.

Section 301.9100-3 sets forth the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election that does not meet the standards of section 301.9100-2. It also sets forth information and representations that the taxpayer must furnish to enable the Service to determine whether the taxpayer has satisfied these standards. The applicable standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Under section 301.9100-3(b)(1)(i), a taxpayer that applies for relief for failure to make an election before the failure is discovered by the Service ordinarily will be deemed to have acted reasonably and in good faith. However, the taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested. Additionally, if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election, or uses hindsight in requesting relief, the taxpayer ordinarily will not be considered to have acted reasonably and in good faith. Section 301.9100-3(b)(3).

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all tax years affected by the regulatory election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Likewise, when the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Further, the interests of the Government are ordinarily prejudiced if the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3. Section 301.9100-3(c)(1)(ii)

The information and representations furnished by P establish that S has acted reasonably and in good faith in this request. Furthermore, granting an extension will not prejudice the interests of the Government. Accordingly, an extension of time is hereby granted under section 301.9100-3 for P to file the necessary Forms 970, on behalf of both D1 and D2, two divisions of its subsidiary, S. Specifically, P may file a Form 970 for the Years 1 and 3 for the inventory held by D1 and D2, respectively. This extension

shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Forms 970 when they are filed.

No opinion is expressed as to the application of any other provisions of the Code or the regulations that may be applicable to the transaction. Specifically, no opinion is expressed regarding the propriety of the LIFO inventory methods used by any member of P's affiliated group.

This ruling is directed only to P, who had requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file with this office, a copy of this ruling is being sent, via facsimile, to each of P's two designated representatives.

Sincerely,

ROY HIRSCHHORN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: